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 of Gypsum Resources Materials, LLC

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

GYPSUM RESOURCES MATERIALS, LLC

- ☒ Affects Gypsum Resources Materials, LLC  
☐ Affects Gypsum Resources, LLC  
☐ Affects all Debtors

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OFFICIAL COMMITTEE OF UNSECURED  
 CREDITORS OF GYPSUM RESOURCES  
 MATERIALS, LLC

VS.

PREMIUM MERCHANT FUNDING ONE, LLC

Case No. BK-S-19-14796-mkn

Jointly Administered with  
 Case No. BK-S-19-14799-mkn

Chapter 11

Adv. No.

**COMPLAINT TO AVOID  
 TRANSFERS PURSUANT TO 11  
 U.S.C. § 547, TO RECOVER  
 PROPERTY TRANSFERRED  
 PURSUANT TO 11 U.S.C. §550, AND  
 TO DISALLOW CLAIMS PURSUANT  
 TO 11 U.S.C. § 502**

1 The Official Committee of Unsecured Creditors of Gypsum Resources Materials, LLC (the  
2 “Committee”), by and through its undersigned counsel, files this complaint (the “Complaint”) to  
3 avoid and recover preferential transfers against Premium Merchant Funding One, LLC (the  
4 “Defendant”) pursuant to sections 547 and 550 of title 11 of the United States Code (the  
5 “Bankruptcy Code”), and to disallow claims held by Defendant pursuant to section 502 of the  
6 Bankruptcy Code. In support of this Complaint, the Committee hereby alleges upon information  
7 and belief as follows:

### 9 **NATURE OF THE CASE**

10 1. This action is commenced pursuant to sections 547 and 550 of the Bankruptcy Code  
11 to avoid and recover from Defendant, or from any other person or entity for whose benefit the  
12 transfers were made, preferential transfers made by Debtor Gypsum Resources Materials, LLC  
13 (“GRM”), that occurred during the ninety (90) day period prior to the commencement of GRM’s  
14 chapter 11 case.

15 2. In addition, the Committee seeks to disallow, pursuant to section 502(d) of the  
16 Bankruptcy Code, any claim that Defendant has filed or asserted against GRM or that has been  
17 scheduled for Defendant, unless Defendant has paid to GRM’s estate any amounts for which it is  
18 liable under sections 547 and 550 of the Bankruptcy Code.

### 21 **JURISDICTION AND VENUE**

22 3. This Court has subject matter jurisdiction over this adversary proceeding which  
23 arises under title 11 of the United States Code, and is related to the above-captioned bankruptcy  
24 case (the “Bankruptcy Case”) pending before the United States Bankruptcy Court for the District  
25 of Nevada (the “Court”), pursuant to 28 U.S.C. §§ 157 and 1334.  
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1           4.       The causes of action set forth herein concern the determination, allowance and  
2 amount of claims pursuant to 11 U.S.C. §§ 502, 547, and 550, and, as such, constitute a “core”  
3 proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2).

4           5.       Venue is proper in this district pursuant to 28 U.S.C. § 1409.

5           6.       The statutory and legal predicates for the relief sought herein are sections 502, 547  
6 and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy  
7 Procedure (the “Bankruptcy Rules”).

8           7.       The Committee states that it consents to the entry of final orders or judgments by  
9 the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders  
10 or judgments consistent with Article III of the United States Constitution.

11  
12                   **BACKGROUND OF THE BANKRUPTCY CASE**

13           8.       On July 26, 2019 (the “Petition Date”), both GRM and Gypsum Resources, LLC  
14 (“GR,” and together with GRM, the “Debtors”), filed voluntary petitions for relief under chapter  
15 11 of title 11 of the Bankruptcy Code with the Bankruptcy Court. The Debtors are managing their  
16 assets as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.  
17 These cases are being jointly administered for procedural purposes pursuant to Rule 1015(b) of  
18 the Federal Rules of Bankruptcy Procedure. No trustee or examiner has been appointed in the  
19 Debtors’ cases.

20           9.       On August 30, 2019, the Office of the United States Trustee appointed the  
21 Committee to represent the unsecured creditors of GRM pursuant to section 1102 of the  
22 Bankruptcy Code.

23           10.      On June 29, 2021, the Bankruptcy Court entered an order approving that certain  
24 Stipulation Granting Derivative Standing to the Official Committee of Unsecured Creditors to  
25 Commence, Prosecute and Resolve Certain Claims and Causes of Action (Case No. 19-14796-  
26  
27  
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1 mkn, Docket No. 1376, the “Derivative Standing Stipulation”), which authorized and gave  
2 derivative standing to the Committee to assert, on behalf of the Debtors’ estates, certain causes of  
3 action, including the causes of action set forth in this Complaint.

4 **FACTUAL BACKGROUND**

5 11. Prior to the Petition Date, GRM maintained business relationships with various  
6 business entities, including manufacturers, landlords, suppliers, distributors, and professional  
7 services firms, and regularly purchased, sold, received, and/or delivered goods and services in  
8 support of its operations.

9 12. On July 15, 2019, GRM merged with High Grade Gypsum LLC (“HGG”), a  
10 Nevada limited liability company. GRM is the survivor of the merger.

11 13. During the ninety (90) day period prior to the Petition Date, that is, between April  
12 27, 2019 and July 26, 2019 (the “Preference Period”), GRM continued to operate its business  
13 affairs, including the transfer of cash and other property, either by checks, cashier checks, wire  
14 transfers, ACH transfers, direct deposits, or otherwise, to various entities.

15 14. During the course of their relationship, GRM and Defendant entered into  
16 agreements or other trade relationships, which are evidenced by invoices, communications, and  
17 other documents (collectively, the “Agreements”).

18 15. GRM and Defendant conducted business with one another during the Preference  
19 Period pursuant to the Agreements.

20 16. The Committee has completed an analysis of all readily available information from  
21 the Debtors, and is seeking to avoid all of the transfers of an interest in GRM’s property made by  
22 GRM to the Defendant during the Preference Period.

1           17. The Committee performed its own due diligence evaluation of the reasonably  
2 knowable affirmative defenses available to Defendant, based on the documents and information  
3 made available to it by the Debtors.

4           18. Based upon the Committee's review of the information, if any, provided by  
5 Defendant, and/or the Debtors, prior to filing this Complaint, and after performing its own due  
6 diligence evaluation of the reasonably knowable affirmative defenses to avoidance of the  
7 Transfer(s) (defined below), the Committee has determined that the Committee may avoid some  
8 or all of the Transfers even after taking into account Defendant's alleged affirmative defenses.

9           19. The Committee has determined that GRM made transfer(s) of an interest of GRM's  
10 property to or for the benefit of the Defendant during the Preference Period through payments  
11 aggregating to an amount of not less than \$435,478.25 (with each individual transfer being a  
12 "Transfer" and all Transfers collectively, the "Transfers"). The details of each of the Transfers are  
13 set forth on Exhibit A attached hereto and incorporated by reference herein.

14           20. During the course of this adversary proceeding, the Committee may learn (through  
15 discovery or otherwise), of additional transfers made by GRM to the Defendant during the  
16 Preference Period. At this time, it is the Committee's intention to avoid and recover all transfers  
17 made by GRM of an interest of GRM in property and to or for the benefit of the Defendant or any  
18 other transferee. The Committee reserves the right to amend this original Complaint to include:  
19 (i) further information regarding the Transfers, (ii) additional transfers from either of the Debtors,  
20 (iii) modifications of and/or revisions to the Defendant's name, (iv) additional defendants, and/or  
21 (v) additional causes of action authorized by a chapter 11, if applicable (collectively, the "Potential  
22 Plan Causes of Action"), that may become known to the Committee at any time during this  
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1 adversary proceeding, through formal discovery or otherwise, and for the Potential Plan Causes of  
2 Action to relate back to this original Complaint.

3 21. The Committee acknowledges that some of the Transfers might be subject to  
4 defenses under section 547(c) of the Bankruptcy Code, for which the Defendant bears the burden  
5 of proof under section 547(g) of the Bankruptcy Code.  
6

7 **CLAIMS FOR RELIEF**

8 **COUNT I**

9 **(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)**

10 22. The Committee incorporates all preceding paragraphs as if fully re-alleged herein.  
11

12 23. Each of the Transfers was made to the Defendant by GRM as identified on Exhibit  
13 A, attached hereto and incorporated herein.

14 24. GRM made the Transfers to or for the benefit of the Defendant in an aggregate  
15 amount of not less than \$435,478.25.

16 25. The Transfers were made from GRM's accounts and constituted transfers of an  
17 interest in property of GRM.  
18

19 26. During the Preference Period, the Defendant was a creditor at the time of each  
20 Transfer by virtue of supplying to GRM the goods and/or services identified in the Agreements,  
21 for which GRM was obligated to pay, in accordance with the Agreements. *See* Exhibit A.  
22

23 27. Each Transfer was to or for the benefit of a creditor within the meaning of section  
24 547(b)(1) of the Bankruptcy Code because each Transfer either reduced or fully satisfied a debt or  
25 debts then owed by GRM under the Agreements to the Defendant as identified in Exhibit A.  
26

27 28. Each Transfer was made for, or on account of, an antecedent debt or debts owed by  
28 GRM identified on Exhibit A to the Defendant before such Transfers were made, as asserted by

1 Defendant and memorialized in the Agreements, each of which constituted a “debt” or “claim” (as  
2 those terms are defined in the Bankruptcy Code) of the Defendant prior to being paid by GRM.  
3 *See Exhibit A.*

4 29. Each Transfer identified on Exhibit A was made while GRM was insolvent. The  
5 Committee is entitled to the presumption of insolvency for each Transfer made during the  
6 Preference Period pursuant to section 547(f) of the Bankruptcy Code.  
7

8 30. Each Transfer was made during the Preference Period. *See Exhibit A.*

9 31. As a result of each Transfer, the Defendant received more than it would have  
10 received if: (i) GRM’s case was under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not  
11 been made; and (iii) the Defendant received payment of its debts under the provisions of the  
12 Bankruptcy Code. GRM’s liabilities exceed its assets to the point that unsecured creditors will not  
13 receive a full payout of their claims.  
14

15 32. The Defendant was the initial transferee of the Transfer(s) or the immediate or  
16 mediate transferee of such initial transferee or the person for whose benefit the Transfer(s) were  
17 made.  
18

19 33. Accordingly, the Committee is entitled to an order and judgment against the  
20 Defendant avoiding each Transfer pursuant to section 547(b) of the Bankruptcy Code.

## 21 **COUNT II**

### 22 **(Recovery of Avoided Transfers – U.S.C. § 550)**

23 34. The Committee incorporates all preceding paragraphs as if fully re-alleged herein.  
24

25 35. The Committee is entitled to avoid the above-described Transfers pursuant to  
26 section 547(b) of the Bankruptcy Code.  
27  
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37. Pursuant to section 550(a) of the Bankruptcy Code, the Committee is entitled to recover from Defendant all Transfers, plus interest thereon to the date of payment and the costs of this action.

37. Pursuant to section 550(a) of the Bankruptcy Code, the Committee is entitled to recover from Defendant all Transfers, plus interest thereon to the date of payment and the costs of this action.

### COUNT III

**(Disallowance of Claims – 11 U.S.C. § 502(d))**

38. The Committee incorporates all preceding paragraphs as if fully re-alleged herein.

39. The Defendant is a transferee of Transfers avoidable pursuant to section 547 of the Bankruptcy Code, which Transfers are recoverable under section 550 of the Bankruptcy Code.

40. The Defendant has not paid the amount of the Transfers or turned over such property for which the Defendant is liable under section 550 of the Bankruptcy Code.

41. Pursuant to section 502(d) of the Bankruptcy Code, any and all claims of the Defendant against GRM must be disallowed until such time as Defendant pays the Committee (for the benefit of GRM's bankruptcy estate and creditors) the amount equal to the aggregate amount of all of the Transfers, plus interest thereon and costs.

## RELIEF REQUESTED

**WHEREFORE**, the Committee respectfully requests that this Court enter an order providing the following relief against Defendant:

A. On Count I, judgment in favor of the Committee and against the Defendant, avoiding the Transfers;



1 B. On Count II, judgment in favor of the Committee and against the Defendant,  
2 directing the Defendant to return to the Committee the amount of the Transfers, pursuant to 11  
3 U.S.C. § 550, plus interest from the date of demand at the maximum legal rate and to the fullest  
4 extent allowed by applicable law, together with the costs and expenses of this action including,  
5 without limitation, attorneys' fees;

6  
7 C. On Count III, judgment in favor of the Committee and against the Defendant,  
8 disallowing any claims filed by the Defendant or scheduled in its favor in the Debtor's chapter 11  
9 case until the Defendant returns the Transfers to the Committee (for the benefit of the GRM  
10 bankruptcy estate) pursuant to 11 U.S.C. § 502(d); and

11  
12 D. Such other relief as this Court may deem just and proper.

13 Dated: July 23, 2021

Respectfully submitted,

14 **The Official Committee of Unsecured Creditors**  
15 **of Gypsum Resources Materials, LLC**

16 By: /s/ Thomas Fawkes  
17 One of Its Attorneys

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*Counsel for the Committee*

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**EXHIBIT A****LIST OF TRANSFERS**

<b>Creditor</b>	<b>Transfer Date</b>	<b>Amount</b>	<b>Check/Wire Number</b>
PREMIUM MERCHANT FUNDING ONE, LLC	04/26/2019	\$3,778.00	ACH 04.26.19
	04/26/2019	\$35.00	ACH 04.26.19
	04/29/2019	\$3,142.85	ACH 04.29.19
	04/29/2019	\$3,778.00	ACH 04.29.19
	04/30/2019	\$3,142.85	ACH 04.30.19
	04/30/2109	\$3,142.85	ACH 04.30.19
	04/30/2019	\$3,778.00	ACH 04.30.19
	04/30/2019	\$35.00	ACH 04.30.19
	04/30/2019	\$35.00	ACH 04.30.19
	04/30/2019	\$3,778.00	ACH 04.30.19
	05/01/2019	\$3,778.00	ACH 05.01.19
	05/01/2019	\$3,142.85	ACH 05.01.19
	05/02/2019	\$3,778.00	ACH 05.02.19
	05/03/2019	\$3,778.00	ACH 05.03.19
	05/06/2019	\$3,778.00	ACH 05.06.19
	05/06/2019	\$3,142.85	ACH 05.07.19
	05/08/2019	\$3,778.00	ACH 05.08.19
	05/08/2019	\$3,142.85	ACH 05.08.19
	05/09/2019	\$3,9404.50	ACH 05.09.19
	05/09/2019	\$3,778.00	ACH 05.09.19
	05/09/2019	\$3,142.85	ACH 05.09.19
	05/10/2019	\$3,778.00	ACH 05.10.19
	05/10/2019	\$3,142.85	ACH 05.10.19

1		05/13/2019	\$3,142.85	ACH 05.13.19
2		05/13/2019	\$3,778.00	ACH 05.13.19
3		05/14/2019	\$3,142.85	ACH 05.14.19
4		05/14/2019	\$3,778.00	ACH 05.14.19
5		05/15/2019	\$3,142.85	ACH 05.15.19
6		05/15/2019	\$3,778.00	ACH 05.15.19
7		05/16/2019	\$3,778.00	ACH 05.16.19
8		05/16/2019	\$3,142.85	ACH 05.16.19
9		05/17/2019	\$3,778.00	ACH 05.17.19
10		05/17/2019	\$3,142.85	ACH 05.17.19
11		05/20/2019	\$3,142.85	ACH 05.20.19
12		05/20/2019	\$3,778.00	ACH 05.20.19
13		05/21/2019	\$3,142.85	ACH 05.21.19
14		05/21/2019	\$3,778.00	ACH 05.21.19
15		05/22/2019	\$3,778.00	ACH 05.22.19
16		05/22/2019	\$3,142.85	ACH 05.22.19
17		05/23/2019	\$3,778.00	ACH 05.23.19
18		05/23/2019	\$3,142.85	ACH 05.23.19
19		05/24/2019	\$3,778.00	ACH 05.24.19
20		05/24/2019	\$3,142.85	ACH 05.24.19
21		05/28/2019	\$3,142.85	ACH 05.28.19
22		05/28/2019	\$3,778.00	ACH 05.28.19
23		05/30/2019	\$3,142.85	ACH 05.30.19
24		05/30/2019	\$3,778.00	ACH 05.30.19
25		05/31/2019	\$3,778.00	ACH 05.31.19
26		06/03/2019	\$3,778.00	ACH 06.03.19
27		06/03/2019	\$3,142.85	ACH 06.03.19
28				

1		06/05/2019	\$3,778.00	ACH 06.05.19
2		06/05/2019	\$3,142.85	ACH 06.05.19
3		06/06/2019	\$3,778.00	ACH 06.06.19
4		06/06/2019	\$3,142.85	ACH 06.06.19
5		06/07/2019	\$3,778.00	ACH 06.07.19
6		06/07/2019	\$3,142.85	ACH 06.07.19
7		06/10/2019	\$3,778.00	ACH 06.10.19
8		06/10/2019	\$3,142.85	ACH 06.10.19
9		06/11/2019	\$3,142.85	ACH 06.11.19
10		06/11/2019	\$3,142.85	ACH 06.11.19
11		06/11/2019	\$3,778.00	ACH 06.11.19
12		06/11/2019	\$3,778.00	ACH 06.11.19
13		06/11/2019	\$3,778.00	ACH 06.11.19
14		06/11/2019	\$3,142.85	ACH 06.11.19
15		06/12/2019	\$3,778.00	ACH 06.12.19
16		06/12/2019	\$3,142.85	ACH 06.12.19
17		06/13/2019	\$3,778.00	ACH 06.13.19
18		06/13/2019	\$3,142.85	ACH 06.13.19
19		06/14/2019	\$3,778.00	ACH 06.14.19
20		06/17/2019	\$3,778.00	ACH 06.17.19
21		06/20/2019	\$3,778.00	ACH 06.20.19
22		06/20/2019	\$3,142.85	ACH 06.20.19
23		06/21/2019	\$3,778.00	ACH 06.21.19
24		06/21/2019	\$3,142.85	ACH 06.21.19
25		06/24/2019	\$3,142.85	ACH 06.24.19
26		06/24/2019	\$3,778.00	ACH 06.24.19
27		06/25/2019	\$20,337.40	ACH 06.28.19
28				

1		06/25/2019	\$3,778.00	ACH 06.25.19
2		06/25/2019	\$3,142.85	ACH 06.25.19
3		06/26/2019	\$3,142.85	ACH 06.26.19
4		06/26/2019	\$3,778.00	ACH 06.26.19
5		06/27/2019	\$3,778.00	ACH 06.27.19
6		06/27/2019	\$3,142.85	ACH 06.27.19
7		06/28/2019	\$3,142.85	ACH 06.28.19
8		06/28/2019	\$3,778.00	ACH 06.28.19
9		07/01/2019	\$3,778.00	ACH 07.01.19
10		07/01/2019	\$3,142.85	ACH 07.01.19
11		07/02/2019	\$3,778.00	ACH 07.02.19
12		07/02/2019	\$3,142.85	ACH 07.02.19
13		07/05/2019	\$3,142.85	ACH 07.05.19
14		07/05/2019	\$3,778.00	ACH 07.05.19
15		07/08/2019	\$3,142.85	ACH 07.08.19
16		07/08/2019	\$3,778.00	ACH 07.08.19
17		07/11/2019	\$3,142.85	ACH 07.11.19
18		07/11/2019	\$3,778.00	ACH 07.11.19
19		07/12/2019	\$3,142.85	ACH 07.12.19
20		07/12/2019	\$3,778.00	ACH 07.12.19
21		07/15/2019	\$3,778.00	ACH 07.15.19
22		07/15/2019	\$3,142.85	ACH 07.15.19
23		07/17/2019	\$3,142.85	DC 07.17.19
24		07/17/2019	\$3,778.00	ACH 07.17.19
25		07/18/2019	\$3,142.85	ACH 07.18.19
26		07/18/2019	\$3,778.00	ACH 07.18.19
27		07/19/2019	\$3,778.00	ACH 07.19.19
28				

	07/19/2019	\$3,142.85	ACH 07.19.19
	07/23/2019	\$3,778.00	ACH 07.23.19
	07/23/2019	\$3,142.85	ACH 07.23.19
	07/24/2019	\$3,778.00	ACH 07.24.19
	07/24/2019	\$3,142.85	ACH 07.24.19
	07/25/2019	\$3,142.85	ACH 07.25.19
	07/25/2019	\$3,778.00	ACH 07.25.19
	07/26/2019	\$3,142.85	ACH 07.26.19
	07/26/2019	\$3,778.00	ACH 07.26.19
	<b><u>TOTAL:</u></b>	<b>\$435,478.25</b>	